IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 400 of 1995.

Judgement reserved on: 17.5.2007

Date of decision: 19.6.2007.

Smt. Seetla Devi & ors. ….. **Appellants.**

Vs.

Roop Chand …. **Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellants : **Mr. Sunil Mohan Goel, Advocate.**

For the Respondents : **B.K.Sood, Advocate, vice Mr. K.D.Sood, Advocate.**

Kuldip Singh, Judge.

The original defendant Paras Ram had filed this appeal against the judgement and decree, dated 17.6.1995, passed by learned Additional District Judge, Kullu, in Civil Appeal No. 34 of 1994. The parties are referred in this judgement, as they were referred in the trial court.

2. The facts in brief are that plaintiff Roop Chand filed a suit for declaration and consequential relief of injunction that he be declared owner in possession of the suit land and defendant has got no right, title or interest over the suit land, plaintiff is not bound by the wrong revenue entries appearing in the name of Ram Chand

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Whether the reporters of the local papers may be allowed to see the Judgment?

deceased. Consequential relief of permanent prohibitory injunction has also been prayed against the defendant from causing interference in the ownership and possession of the plaintiff on the suit land.

3. The further case of the plaintiff is that Ram Chand was the owner and plaintiff was tenant under said Ram Chand on the suit land. Ram Chand had died without leaving wife, male or female issue, his parents had already died. The defendant being the brother of Ram Chand, is his sole heir. The plaintiff on coming into force of H.P. Tenancy and Land Reforms Act, 1972 (for short, Act) has become owner of the suit land by operation of law and mutation No. 37 to this effect was also attested on 11.5.1986 in favour of the plaintiff. The defendant retired as Tehsildar and by exerting his influence got the mutation reviewed at the back of the plaintiff. The plaintiff filed an appeal before the Collector, Kullu, who remanded the mutation proceedings to Assistant Collector, who has not decided the mutation after remand. The defendant taking advantage of the wrong entries started causing unlawful interference on the suit land. In these circumstances, plaintiff filed the suit.

4. The suit has been contested by defendant and he took preliminary objections of maintainability, jurisdiction of the civil court to try the suit, plaintiff is not in possession, the plaintiff has no locus standi to file the suit and the suit is bad for non-joinder of necessary parties. On merits, it has been averred that Ram Chand was a physically challenged person and, therefore, he had given the suit land for cultivation to defendant and entries of tenancy in favour of

plaintiff of suit land are wrong. The defendant being the real brother of Ram Chand and being already in possession of the suit land, after the death of Ram Chand continued in cultivating possession of the suit land as owner. The mutation No. 37, conferring proprietary rights in favour of the plaintiff is wrong.

5. The trial court held that plaintiff is owner in possession of the suit land and he is entitled to relief of permanent prohibitory injunction and decreed the suit. The defendant filed appeal, which has been dismissed by the learned Additional District Judge, hence defendant is in second appeal.

6. The defendant died during the pendency of the appeal and his legal representatives have been brought on record.

7. The appeal was admitted on the following substantial question of law:-

> Whether the Courts below erred in holding that Civil Court has jurisdiction and that judgement of this Hon'ble Court in Chunniya Devi vs. Jindu Ram and others 1991 (1) Shimla L.C. page 223, is not applicable in the present case.

8. I have heard the learned counsel for the parties and have also gone through the record.

9. Learned counsel for the defendant has submitted that civil court has no jurisdiction to try the suit in view of law laid down by this Court in Chuhniya Devi vs. Jindu Ram [1991 (1) Sim. L.C. 223]. On the contrary, the learned counsel for the plaintiff has submitted that in the present suit the dispute has not been raised by the plaintiff with respect to conferment of proprietary rights. The suit has been

filed by the plaintiff to protect his rights, his case is that after coming into force of the Act, he has become owner of the suit land by operation of law, and therefore, he has every right to protect his possession by seeking a decree of permanent prohibitory injunction, which can be granted only by the Civil Court.

10. The plaintiff has filed the suit for declaration that he is owner of the suit land by operation of law. He was inducted tenant on suit land by Ram Chand and after coming into force of the Act, he is owner in possession of the suit land. The two courts below have concurrently decided the status of the plaintiff on the suit land.

11. In **Chuhniya Devi vs. Jindu Ram** [1991 (1) Sim. L.C. 223], a Full Bench of this Court in para 64-b of the judgement, has held as follows:-

> "(b) the civil court has no jurisdiction to go into any question connected with the conferment of proprietary rights under section 104 of the H.P. Tenancy and Land Reforms Act, 1972, except in a case where it is found that the statutory authorities envisaged by that Act had not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the Act had not been complied with".

The question before the Court in **Chuhniya Devi's** case was whether a civil court has jurisdiction in respect of an order (a) made by the competent authority under the H.P. Land Revenue Act, 1954 and (b) of conferment of proprietary rights under Section 104 of the H.P. Tenancy and Land Reforms Act, which has not been assailed under the provisions of these Acts.

12. The question in this case is whether in view of Chuhniya Devi's case (supra), the civil court has no jurisdiction to try the suit. The Civil Court under Section 9 of the Code of Civil Procedure, has the jurisdiction to try every type of civil suit cognizance of which is not either expressly or impliedly prohibited. The exclusion of the jurisdiction of the civil court is not to be inferred easily.

13. In **Dhulabhai etc. vs. State of Madhya Pradesh and another** [AIR 1969 SC 78], the Hon'ble Supreme Court in para- 32 of the judgement, has held as follows:-

> "(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.
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> (2) Whether there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.
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> Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether

remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."

14. In **State of Andhra Pradesh vs. Manjeti Laxmi Kantha Rao (D) by L.Rs. and others** [AIR 2000 SC 2220], the Hon'ble Supreme Court, in para-5 of the judgement, has held as follows:-

"The normal rule of law is that civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is either expressly or impliedly excluded as provided under Section 9 of the Code of

> Civil Procedure but such exclusion is not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the Civil Courts to try civil suit. The test adopted in examining such a question is (i) whether the legislature intent to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it. In Dhulabhai v. State of Madhya Pradesh, (1968) 3 SCR 662 : (AIR 1969 SC 78), it was noticed that where a statute gives finality to the orders of the special Tribunals jurisdiction of the civil Courts must be held to be excluded if there is adequate remedy to do what the civil Courts would normally do in a suit and such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure."

15. The case of the plaintiff is that he is owner of the suit land by operation of law, as he was earlier tenant on the suit land and he has prayed permanent injunction against defendant for causing interference on the suit land. The conferment of proprietary rights on a tenant under the Act is automatic, as has been held in **Daulat Ram and others vs. State of H.P. and others.** [1979 Sim. L.C. 215]. The relevant portion of para-15 of this very judgement, is reproduced, as follows:-

> ".....The conferment of the proprietary rights under the Act is automatic from the date of the issue of the notification by the State Government in the Official Gazette, and the vestment of ownership shall be free

> from all encumbrances. Under Rule 27 of the Himachal Pradesh Tenancy and Land Reforms Rules 1975, all rights, title and interests in the tenancy land of landowners….. shall vest in the non-occupancy tenants with effect from the commencement of these rules. Similarly, the proprietary rights of tenancy land of the non-occupancy tenants on Government land shall also vest in the tenants from the commencement of these rules. These rules came into force on 3.10.1975. Therefore, from that date the ownership rights vested free from all encumbrances on the persons who were so recorded as tenants under the landowners or for the matter of that the State Government in that land…..”

In **Mohar Singh vs. Manju Devi & others** [1997 (1) SLJ 304], this court has held in paragraph-11, of the judgement, as follows:-

> “……..Needless to point out here that after coming into force of the Himachal Pradesh Tenancy and Land Reforms act, 1972, the conferment of proprietary rights is automatic and by operation of law. Rest of the matter is procedural as required under the Act and the rules framed thereunder…….”

16. The jurisdiction of the civil court is barred under the Act, if the dispute of relationship between landlord and tenant arises during the proceedings of conferment of proprietary rights upon the tenant and the order in respect thereof has been passed by the authorities under the Act, but if the dispute of landlord and tenant arises independent of the proceedings under the Act, the Civil Court has the jurisdiction. In **Shanker vs. Smt. Rukmani and others** [2003 (1) SLJ 283], this court in paragraph-9 of the judgement, has held as follows:-

> "After analysing the judgement in Chuhniya Devi vs. Jindu Ram's case (supra), we have no doubt that the jurisdiction of the Civil Court is barred under the Act, if the dispute pertaining to the relationship of landlord and tenant arises during the relationship of landlord and tenant arises during the proceedings of conferment of proprietary rights upon the tenant and resumption of land by the land owner and the order in respect thereof has been passed by the authorities under the Act except in a case where it is found that the statutory authorities envisaged by that Act had not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the Act had not been complied with. But if the dispute of landlord and tenant arises independent of the proceedings under the Act, the Civil Court has the jurisdiction.

17. In the present case, order of conferment of proprietary rights under the Act, has not been challenged. The civil court has the jurisdiction to take cognizance of the matter and decide the dispute. The plaintiff has right to protect his possession on the basis of his title and civil court has jurisdiction to try a suit where plaintiff seeks declaration of his title with consequential relief of permanent prohibitory injunction especially when conferment of proprietary right order has not been challenged. The defendant has failed to make out a case how the suit filed by the plaintiff is barred under the Act. The present suit is triable by civil court and not barred in view of decision in **Chuhniya Devi's case (**supra). The substantial question of law is decided against the defendant.

18. No other point was urged.

19. In view of above discussion, the appeal is dismissed with costs.

June 19, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**